

**UNITED STATES OF AMERICA
BEFORE THE NATIONAL LABOR RELATIONS BOARD
FOURTH REGION**

CATELLI BROTHERS, INC.

Employer

and

Case 4–RC–21173

UNITED FOOD AND COMMERCIAL
WORKERS, LOCAL 342¹

Petitioner

**REGIONAL DIRECTOR’S DECISION AND
DIRECTION OF ELECTION**

The Employer, Catelli Brothers, is engaged in processing, packaging, and distributing veal and lamb products at facilities located in Collingswood, Pennsauken, and Shrewsbury, New Jersey. The Petitioner, UFCW Local 342, filed a petition with the National Labor Relations Board under Section 9(c) of the National Labor Relations Act seeking to represent a unit of the production and maintenance employees employed at these three facilities.²

The Employer disagrees with the Petitioner as to the inclusion of several employee classifications. The Petitioner contends that the Employer’s lead production employees, known as “Gray Hats,” are supervisors within the meaning of the Act and should therefore be excluded from the bargaining unit, while the Employer asserts that they are not supervisors and should be included in the unit.³ The Petitioner also contends that the truck drivers and mechanics do not share a community of interest with the petitioned-for production and maintenance employees, while the Employer would include these classifications in the unit.

¹ The Petitioner’s name appears as amended at the hearing.

² The parties stipulated that the following individuals are supervisors who should be excluded from the unit: Vice-President of Production Thomas Thompson, Shrewsbury Plant Manager Edward Cook, Shrewsbury Assistant Plant Manager Luis Alvarez, Shrewsbury White Hat Gabriel Alvarez, Pennsauken Plant Manager Russell Oden, and Collingswood Gold Hats Al McGann, Nelson Robinson, Andrew Hartman, Gerard Scanlan, and Mike Mallgrave.

³ Gray Hats, who are employed only at the Collingswood facility, include David Young, Richard Mosely, Nelson Figueroa, William Baldwin, Natale Marino, Juan Gonzalez, Moises Tirado, Jose Maldonado, Theodore Marshall, Steven Williams, Darryl Beckham, and Samuel Prather.

The Petitioner's proposed unit would consist of about 175 employees, while the Employer's proposed unit would include approximately 206 employees. The Petitioner has indicated that it will proceed to an election in any unit found appropriate.

A Hearing Officer of the Board held a hearing, and the parties filed briefs. After considering the evidence and the arguments presented by the parties, I have concluded that the Gray Hats are not supervisors and should be included in the unit, but that the truck drivers and mechanics should be excluded.

To provide a context for my discussion, I will first present an overview of the Employer's operations. Then, I will review the factors that must be evaluated in determining whether Gray Hats are statutory supervisors and present the relevant facts and analysis as to their supervisory status. Thereafter, I will present the appropriate legal analysis for determining whether truck drivers and mechanics share a community of interest with production and maintenance employees requiring their inclusion in the petitioned-for unit and set forth the facts and analysis concerning these issues.

I. OVERVIEW OF OPERATIONS

The Employer employs about 50 to 60 employees at the Shrewsbury facility, which is essentially a slaughterhouse for the Employer's veal products.⁴ Calf skins produced by the Shrewsbury operation are shipped to the Pennsauken facility to be cured, sorted, and shipped for export throughout the world. The Employer has about five employees at the Pennsauken facility.

The Collingswood facility is the Employer's main meat-cutting and processing plant. There are about 125 to 135 employees at this location. Collingswood processes carcasses from calves slaughtered at Shrewsbury, as well as lamb carcasses that are purchased primarily from a company in Colorado.⁵ After arrival of the carcasses, the first operation at Collingswood is to break them down into standard primal cuts, such as legs and loins. The meat is then cut into smaller pieces at the various cutting lines and sent to the packaging lines, where it is placed in Cryovac packages for shipping.

Each day, there is a daily production meeting between Vice-President of Production Thomas Thompson and members of the Employer's sales department, where Thompson determines what customer orders need to be filled. He then creates computerized production instructions for the processing and packaging of the meat. These instructions provide detailed cutting and packaging instructions for the entire facility.

⁴ There is also a grinding room at Shrewsbury for the grinding of veal and lamb and the cutting of veal cutlets.

⁵ The Employer's administrative and sales offices are also located at the Collingswood facility. The accounting office is in Solebury, Pennsylvania.

Almost all of the Employer's personnel have designations based on the color of their hats. Thompson, CEO Anthony P. Catelli, Jr., the Vice-Presidents, and sales personnel are called White Hats.

Thompson distributes his computerized instructions to the managers of the five departments within the Collingswood facility. These managers are called Gold Hats and report directly to Thompson. They spend most of their time in their respective production areas. Gold Hat Al McGann oversees Breakdown Operations, Nelson Robinson manages the Boning operation, Andrew Hartman is in charge of Further Operations,⁶ Michael Mallgrave oversees the Warehouse Operations, and Gerard Scanlan supervises Logistics.

The bulk of the Collingswood facility's work is performed by employees, known as Red Hats, who staff various production lines dedicated to specific tasks. Each line receives its work through a system of conveyor belts that runs through the facility.

Upon receiving their instructions from Thompson, the Gold Hats distribute these instructions to the Gray Hats, who serve as the production line leaders within each department. The Gray Hats are responsible for implementing the production orders by making sure that the Red Hats know what to do. They oversee the flow of the product through their respective lines, ensuring that the lines have sufficient raw materials and are processing the meat in accordance with the customers' specifications.

The Employer's 14 truck drivers work out of the Collingswood facility. About half of them drive straight trucks which range in length from 14 to 22 feet, while the rest drive tractor-trailers. The straight trucks are driven locally in the Philadelphia metropolitan area and as far away as New York and Washington D.C. Truck drivers drive tractor-trailers to points ranging from Maine to Virginia.⁷ All of the trucks are refrigerated. In addition to delivering the Employer's meat products, truck drivers drive carcasses and skins between the Employer's three New Jersey facilities. Collingswood is about 75 miles from Shrewsbury and is about five miles from Pennsauken. The truck drivers are supervised by Gold Hat Gerard Scanlan and the Vice-President in charge of the warehouse and distribution, James Catelli.⁸

The Employer's five mechanics, known as Green Hats, are supervised by the Employer's Vice-President of Engineering, Donald Crozier. The mechanics repair and maintain the Employer's production equipment. There are four mechanics assigned to Collingswood and one mechanic assigned to Shrewsbury, and Crozier or one of the Collingswood mechanics provides service as needed at Pennsauken, although mechanic service is not frequently needed there. In

⁶ Further Operations includes packaging operations.

⁷ The Employer uses independent common carriers to make deliveries outside of the northeastern United States.

⁸ Other employees that have hat designations include Black Hats, who are communication committee representatives, Orange Hats, who are safety committee members, Yellow Hats, who are new employees, and Tan Hats, who perform quality control functions. There are also Blue Hats, who are line leaders that oversee specific segments of production. No party seeks to exclude any of these employee groups.

Collingswood, mechanics have a separate mechanics' shop near the production floor. They also work on the production floor because some machinery cannot be moved into the mechanics' shop.

II. GRAY HATS

A. Applicable Precedent

Supervisors are specifically excluded from coverage under the National Labor Relations Act. The burden of establishing supervisory status is on the party asserting that such status exists. *NLRB v. Kentucky River Community Care, Inc.*, 532 U.S. 706 (2001); *Fleming Companies, Inc.*, 330 NLRB 277, fn. 1 (1999); *Bennett Industries*, 313 NLRB 1363 (1994). Section 2(11) of the Act sets forth a three-part test for determining whether an individual is a supervisor. Pursuant to this test, employees are statutory supervisors if: (1) they have the authority to engage in any one of the 12 supervisory functions listed in Section 2(11); (2) their exercise of such authority is not of a merely routine or clerical nature but requires the use of independent judgment; and (3) their authority is held in the interest of the employer. See *NLRB v. Kentucky River Community Care, Inc.*, above, 532 U.S. at 712-713; *NLRB v. Health Care & Retirement Corp. of America*, 511 U.S. 571, 573-574 (1994).

The statutory criteria for supervisory status set forth in Section 2(11) are read in the disjunctive, and possession of any one of the indicia listed is sufficient to make an individual a supervisor. See *Juniper Industries, Inc.* 311 NLRB 109, 110 (1993). The Board analyzes each case in order to differentiate between the exercise of independent judgment and the giving of routine instructions, between effective recommendation and forceful suggestions, and between the appearance of supervision and supervision in fact. The exercise of some supervisory authority in a merely routine, clerical, or perfunctory manner does not confer supervisory status on an employee. See *Juniper Industries, Inc.*, above at 110. The authority to effectively recommend an action means that the recommended action is taken without independent investigation by superiors, not simply that the recommendation is ultimately followed. See *Children's Farm Home*, 324 NLRB 61 (1997); *Hawaiian Telephone Co.*, 186 NLRB 1 (1970). The Board has an obligation not to construe the statutory language too broadly because the individual found to be a supervisor is denied the protection of the Act. *Azusa Ranch Market*, 321 NLRB 811, 812 (1996). Where the evidence is in conflict or otherwise inconclusive on particular indicia of supervisory authority, the Board will find that supervisory status has not been established, at least on the basis of those indicia. *Phelps Community Medical Center*, 295 NLRB 486, 490 (1989). The sporadic exercise of supervisory authority is not sufficient to transform an employee into a supervisor. See *Gaines Electric*, 309 NLRB 1077, 1078 (1992); *Ohio River Co.*, 303 NLRB 696, 714 (1991), *enfd.* 961 F.2d 1578 (6th Cir. 1992).

B. The Petitioner's Contentions

There is no contention that Gray Hats have the authority to hire, fire, suspend, layoff, recall, or promote any employee. These responsibilities are exercised by the Gold Hats and Vice-Presidents Thompson, Catelli, and Crozier.

The Petitioner contends that the Gray Hats are supervisors based upon their authority to assign work, responsibly direct employees, transfer employees, discipline employees, prepare performance evaluations, and resolve employee grievances.

C. Facts

Terms and conditions of employment

Gold Hats and White Hats are paid salaries, while Gray Hats and Red Hats are paid by the hour.⁹ Red Hats, unless they have prior meat-cutting experience, start as utility employees making \$8.25 per hour. As they gain skill and seniority and are cross-trained, they can earn as much as \$21 per hour. Although the Gray Hats are paid more than the average employee on the production lines that they oversee, there are individual production employees who earn slightly more per hour than individual Gray Hats. The terms and conditions of employment of the Gray Hats and Red Hats are set forth in the same employee handbook, which includes fringe benefits such as health insurance, a 401(k) plan, and a Christmas bonus. The handbook also includes a disciplinary system.

Work Assignments and Other Responsibilities

The Gray Hats spend about 70 to 75 percent of their time working on the line performing the same work as the Red Hats. Gray Hats also have several additional duties and responsibilities. They arrive an hour before the Red Hats to make sure that the work area is clean before production begins. When production begins, they transmit the information to the Red Hats on their production lines that has been provided by Thompson to the respective Gold Hats. This information includes the product order, the product code, the amount of product ordered, the cut specifications, and the packaging. If a Gray Hat notices that a customer's specifications are not being followed, he or she instructs the Red Hat concerning the proper way to cut or package the meat. For the most part, the Red Hats at Collingswood know their jobs and do not need instruction.

Red Hats start work each day in the same position on the line and perform work that arrives via the conveyer belt. During the day, they generally rotate to different tasks in order to avoid repetitive motion injuries. Job rotation is required by OSHA regulations. The rotation system was established pursuant to a plan devised by Thompson and the Employer's Director of Operations and requires that different types of employees switch jobs at specified times, e.g., a breaker position is rotated at 7:00, 9:00, and 10:30. Gray Hat Darryl Beckham, who works on a veal production line, testified that all 10 or 11 employees on his line know how to perform all tasks and they regularly rotate between them.

⁹ Prior to late 2004, the Gray Hats were salaried employees. According to the Employer, they were changed to hourly pay at that time to comply with Department of Labor wage-and-hour regulations. All drivers and mechanics are also paid by the hour except for one driver who receives a salary.

In addition to transmitting Thompson's instructions, correcting work, and performing production work, the Gray Hats are responsible for record-keeping. They fill out government-mandated checklists which document that the Employer's procedures for cleanliness are satisfied. If a Gray Hat finds a sanitation problem, he or she contacts the Sanitation Department, which dispatches an employee to correct the problem. Additionally, Gray Hats complete paperwork to verify that the Employer meets OSHA requirements for job rotation. Gray Hats are also responsible for "reconditioning" meat. In this capacity, if an employee drops a piece of meat, the Gray Hat records the problem in a log, cleans the meat, and reinspects it.

The Gray Hats have no role in determining when the work day will start or end or when employees take breaks, matters determined by Thompson and the Gold Hats. The Gray Hats tell employees if they are to work overtime, but there is no evidence that they have input into the decision to schedule the work or select which employees will perform it. Employees inform Gray Hats if they need bathroom breaks so that the Gray Hat can fill the employee's position on the line while the employee is away.

CEO Anthony Catelli stated that the Gray Hats have no authority to transfer employees. According to Gray Hat Beckham, Gold Hat McGann tells him which employee to transfer from his department to fill a temporary need. Former employee Raymond Orsini testified that a Gray Hat would instruct him to move to another line and that if he refused to go he would be disciplined by either Thompson or McGann, but Orsini did not testify that the Gray Hat made the transfer decision.

Anthony Catelli further testified that employees make requests to Gold Hats or Thompson for time off for vacation or illness. A former employee, Roy Nicholas Lash, who last worked for the Employer in February 2005, testified that employees ask Gray Hats for time off, but that the Gray Hats forward those request to Thompson and the Employer's Human Resource department. He further explained that employees may ask permission from Gray Hats to accept pay in lieu of vacation, but that Gray Hats take these requests to Human Resources, which grants them as a matter of course.

Disciplinary Authority and Evaluations

Although Gray Hats correct employees as to how they perform their jobs, if an employee continues to make the same mistakes, the Gray Hat will not personally take action but will inform a Gold Hat of the problem. Former employee Lash testified that Gray Hats issue disciplinary warnings, and the record in fact includes two disciplinary warnings that have been signed by Gray Hats. Thompson testified, however, that he personally maintains all disciplinary records and that no disciplinary warnings are issued without his approval. Indeed, one of the two warnings entered into the record indicates that Thompson reduced a written warning issued by Gray Hat Samuel Prather to a verbal warning.

The Gray Hats perform annual written evaluations of the employees that they oversee. Lash testified that his evaluation once indicated that he would receive a raise, but he further explained that he was told that CEO Catelli and the Human Resources department made the decision to award it.

Lash testified that Gray Hats have the authority to adjust employee grievances. However, he provided only a single instance of this purported authority. He stated that when an employee complained to a Gray Hat about the quality of the product cut by another meat cutter, the Gray Hat corrected that meat cutter.

D. Analysis

The Petitioner has not carried its burden of establishing that the Gray Hats are supervisors within the meaning of Section 2(11) of the Act.

Initially, the Petitioner has failed to demonstrate that the Gray Hats use independent judgment to assign work to employees. Rather, Thompson decides the tasks to be performed by each line and communicates his decision to the Gold Hats. The Gold Hats then communicate Thompson's instructions to the Gray Hats, who inform the employees on their lines. There is no evidence that Gray Hats use their discretion in making any work assignments. Because assignments are rotated between the employees on the line and some tasks can only be assigned to employees who are fully trained, assignments are generally routine. *Armstrong Machine Co.*, 343 NLRB No. 122 (2004); *Volair Contractors, Inc.*, 341 NLRB 673, 675 (2004); *Ferguson Electric Co.*, 335 NLRB 142, 147 (2001); *Arlington Electric, Inc.*, 332 NLRB 845, 845-846 (2000).

After the Red Hats receive their assignments, the Gray Hats' role in directing them in their work is also limited. The discretion of the Gray Hats is circumscribed by the detailed production orders generated by Thompson, governmental regulations, and the Employer's standard operating procedures aimed at satisfying those regulations. The degree of judgment exercised by the Gray Hats in directing others in their work does not rise to the threshold which would constitute responsible direction and thus establish supervisory authority. *Dynamic Science, Inc.*, 334 NLRB 391 (2001); *Chevron Shipping Co.*, 317 NLRB 379, 381 (1995).

When they are not performing the same work as Red Hats, the Gray Hats are generally performing paperwork related to sanitation and OSHA regulations. However, this record-keeping function is essentially ministerial and does not rise to the level of supervisory status. *Brown & Root, Inc.*, 314 NLRB 19, 21(1994). The Gray Hats also correct the work of Red Hats at times, but these corrections are an application of their technical competence and experience rather than the exercise of supervisory authority. *Arlington Electric, Inc.*, above.

The Gray Hats have no authority to transfer employees between lines. Rather, Thompson and the Gold Hats make the decisions to transfer employees, and Gray Hats do no more than inform the employees of these decisions.

Although Gray Hats may sign disciplinary warnings, they do not have the authority to discipline employees or effectively to recommend discipline. Instead, they report disciplinary problems to Gold Hats or Thompson, and Thompson retains all disciplinary authority. Moreover, while Gray Hats may recommend discipline, Thompson does not necessarily adopt their disciplinary recommendations, as shown by the fact that he overruled Prather's issuance of

a written warning. Thus, the Gray Hats' role in recommending discipline is not indicative of supervisory status. *Willamette Industries, Inc.*, 336 NLRB 743, 744 (2001); *Loyalhanna Care Center*, 332 NLRB 933, 934 (2000). Additionally, signing a disciplinary form does not constitute supervisory status absent a showing that the purported supervisor was involved in the decision to issue discipline. *Pan-Oston Co.*, 336 NLRB 305 (2001).

Gray Hats prepare written evaluations, but there is no evidence that these evaluations affect the employees' wage rates or job status; CEO Catelli makes the decisions as to employee wages. Preparing evaluations that do not lead directly to personnel actions which affect either the wages or job status of employees does not rise to the level of the exercise of supervisory authority. See *Elmhurst Extended Care Facilities, Inc.*, 329 NLRB 535, 536 (1999); *Vencor Hospital-Los Angeles*, 328 NLRB 1136 (1999).

Gray Hats do not adjust grievances within the meaning of Section 2(11). The sole example of a "grievance" involved a complaint by one employee about another employee's work, not a complaint against the Employer.

In short, I find that the Gray Hats' responsibilities with respect to work assignments, direction, transfers, discipline, performance evaluations, and the adjustment of grievances do not demonstrate the exercise of independent judgment, but rather involve routine decisions typical of leadpersons found by the Board not to be statutory supervisors. Gray Hats spend the vast majority of their time performing the same work as Red Hats, and the highest-paid Red Hats are paid as much or more than Gray Hats. I therefore find that the Gray Hats are not supervisors within the meaning of the Act. *Volair Contractors, Inc.*, above; *Arlington Electric, Inc.*, above; *Ferguson Electric*, above; *Brown & Root, Inc.*, above.¹⁰

¹⁰ With the inclusion of Gray Hats, the five Gold Hats would be the immediate supervisors of approximately 107 to 117 bargaining unit employees in Collingswood. A ratio of one supervisor to about every 23 employees might suggest that Gray Hats are supervisors. However, the record does not establish exactly how many employees are in each of the departments supervised by individual Gold Hats, nor does it establish that the Gold Hat's superiors are not involved in directly supervising unit employees. Moreover, absent evidence that individuals possess any of the enumerated indicia of supervisory status in Section 2(11), there is no reason to consider secondary indicia, such as the employee-supervisor ratio. *Hausner Hard-Chrome of KY, Inc.*, 326 NLRB 426, 427 (1998). See also *J.C. Brock Corp.* 314 NLRB 157, 159 (1994).

Massachusetts Coastal Seafoods, Inc., 293 NLRB 496, 505-507 (1989), cited by the Petitioner, is distinguishable. In that case, among other things, the disputed lead employees had the authority to resolve pay disputes, to send employees home based on their own judgment, and to assign tasks to employees that would result in higher pay. None of these types of authority are present for the Gray Hats.

III. MECHANICS AND TRUCK DRIVERS

A. Applicable Precedent

The Board's procedure for determining an appropriate unit under Section 9(b) is first to examine the petitioned-for unit. If that unit is appropriate, then the inquiry ends. *Dezcon, Inc.*, 295 NLRB 109, 111 (1989). If the petitioned-for unit is not appropriate, the Board may examine the alternative units suggested by the parties, but it also has the discretion to select an appropriate unit that is different from the alternative unit proposals of the parties. See, e.g., *Bartlett Collins Co.*, 334 NLRB 484 (2001); *Overnite Transportation Co.*, 331 NLRB 662, 663 (2000). The Board generally attempts to select a unit that is the smallest appropriate unit encompassing the petitioned-for employee classifications. See, e.g., *R & D Trucking, Inc.*, 327 NLRB 531 (1999); *State Farm Mutual Automobile Insurance Co.*, 163 NLRB 677 (1967), *enfd.* 411 F.2d 356 (7th Cir. 1969). It is well settled that the unit need only be *an* appropriate unit, not the most appropriate unit. *Morand Brothers Beverage Co.*, 91 NLRB 409, 419 (1950), *enfd.* on other grounds, 190 F.2d 576 (7th Cir. 1951). The Board's declared policy is to consider only whether the unit requested is an appropriate one, even though it may not be the optimum or most appropriate unit for collective bargaining. *Black & Decker Manufacturing Co.*, 147 NLRB 825, 828 (1964).

In determining whether a group of employees possesses a separate community of interest, the Board examines such factors as: (1) functional integration; (2) frequency of contact with other employees; (3) interchange with other employees; (4) degree of skill and common functions; (5) commonality of wages, hours, and other working conditions; and (6) common supervision. *Publix Super Markets, Inc.*, 343 NLRB No. 109 (2004); *Home Depot USA, Inc.*, 331 NLRB 1289 (2000).

B. Facts

Truck Drivers

Gold Hat Gerard Scanlan, who is in charge of the Employer's shipping and transportation departments, supervises the truck drivers along with Vice-President James Catelli. To be hired, truck drivers must have a Commercial Drivers License (CDL) and successfully complete a test drive with either Scanlan or Gold Hat Mike Mallgrave. All of the Employer's truck drivers earn between \$17 and \$19 per hour. The only cross-training they receive is to learn shipping skills. About three to five of the drivers are certified to drive forklifts.

The truck drivers' primary function is to drive trucks loaded by bargaining unit shipping employees to their destinations. At times, truck drivers help the shipping employees prepare, pick, or load orders onto their trucks, but the record does not indicate how many drivers are involved in this process. Truck drivers, particularly the local drivers, do not always have enough driving work to complete an eight-hour day. In those situations, they are permitted to return to the Collingswood facility and perform shipping work, but the record is not clear as to how often this occurs. While the Collingswood facility's normal work hours are from 5:00 a.m. until 1:30 p.m., truck drivers, especially those with long-distance routes, may drive at any hour of the day

or night and may pick up loaded trucks when the facility is not open. When a truck driver either leaves or returns when the facility is not open, he or she uses a separate time clock located outside the building.

The vast majority of truck drivers' time is spent away from the Employer's facilities, and once they are on the road they have no contact with production and maintenance employees. Even while at the facility, their only opportunity for work-related interaction is with the shipping employees. No production and maintenance employee has ever transferred into a truck driver's position.

When truck drivers are on the road, Catelli and Scanlan communicate with them using Nextel phones. Catelli and Scanlan prepare written evaluations of the truck drivers on an annual basis.

Like the mechanics and production and maintenance employees, truck drivers are covered by the Employer's handbook, and they must comply with Department of Transportation regulations. Truck drivers wear uniforms but do not have to wear hats unless they walk through the plant; they have no hat color designation. About four times a year, the Employer or its leasing company has drivers-only meetings concerning safety issues or new regulations.

Mechanics

The Employer's Vice-President of Engineering, Donald Crozier, is the immediate supervisor of the Employer's five mechanics. Mechanics, like all of the other employees, are hired through the Employer's Human Resource department. However, unlike others, they are often hired at the request of Crozier, and he interviews all prospective mechanics. Crozier has no similar responsibility with respect to any of the Employer's other employees, who are hired directly by Human Resources.

Mechanics' pay rates range from \$12 to \$20 per hour. All mechanics are trained to repair the Employer's five different types of packaging equipment. Crozier promotes mechanics to higher pay rates based on his evaluation of their additional electrical or refrigeration skills. Currently, one of the mechanics holds licenses as an electrician and for refrigeration. Crozier also prepares the written evaluations for mechanics. Their terms and conditions of employment are set forth in the same handbook as covers the Employer's other employees.

While production and maintenance employees are cross-trained in various skills, mechanics receive no cross-training beyond that which is directly relevant to their jobs. As a rule, mechanics do not learn meat-cutting skills, although they may fill machines with meat products to ensure that they are working properly. When a machine on the floor needs a "change over" from one product to another, production employees may assist the mechanic. Only one or two production and maintenance employees have ever become mechanics, and there is no evidence that any mechanic has ever transferred to production and maintenance. Mechanics have a separate shop at Collingswood because they use cleaning solvent, drills, and other specialized tools and materials that are maintained there. To avoid interruptions in the production process,

mechanics will at times be required to work after the other employees have gone home for the day.

Mechanics wear distinctive green uniforms and green hats. Like production employees, when they are working in production areas they must also wear a hair net and white frock over their uniforms. The mechanics' frocks, however, are shorter than production workers' frocks so that they won't get caught in the machinery.

C. Analysis

There is a sufficient separate community of interest distinguishing the mechanics and truck drivers from the production and maintenance employees so that their inclusion is not required for the petitioned-for unit to be considered appropriate for collective bargaining.

Truck drivers spend the vast majority of their time away from the Employer's facilities driving their trucks. While on the road, truck drivers have no occasion to communicate with unit employees. Although some of the drivers at times work with shipping employees, there is no evidence establishing exactly how often or for how long this interaction occurs. Moreover, they have no working contact with unit employees other than shipping employees. Additionally, non-local drivers routinely drive their trucks at times when the Employer's facilities are closed and may pick up their trucks from the facility without interacting with unit employees at all.

Significantly, there has been no permanent interchange between the truck drivers and the production and maintenance employees. This lack of interchange is a function of the skills that distinguish the truck drivers from the Employer's other employees. Unlike production and maintenance employees, truck drivers need a CDL and must also pass a driving test. While all production and maintenance employees are offered the opportunity to receive cross training to become skilled meat cutters, the training in unit work available to truck drivers involves only shipping skills.

Truck drivers also have a far higher starting wage rate than most unit employees. Additionally, they are not required to wear hats, unlike other employees, and they wear a different uniform. The truck drivers share immediate supervision with the Employer's shipping employees, but this factor is insufficient to outweigh the other factors favoring their exclusion from the unit.

Mechanics also possess significantly different skills than production and maintenance employees and are paid generally higher wages. They are also supervised by Crozier separately from the Employer's other employees. Moreover, unlike production and maintenance employees, their supervisor plays an active role in hiring them. The mechanics' cross-training is restricted to their particular skill area as opposed to the skills exercised by the employees in the petitioned-for unit. The mechanics at Collingswood work in a separate shop unless they repair machinery on the production floor, and the record does not establish that they spend a significant amount of time on the production floor or working with production employees when repairing or changing over machines. There is minimal interchange at most between the mechanics and

production and maintenance employees. Mechanics also wear a different color hat than other employees.

The Employer contends that a common handbook, benefits, pay system, seniority list, hours, supervisory structure, and functional integration compel the inclusion of the truck drivers and mechanics in the production and maintenance unit. This contention is without merit. While the handbook applies the same benefits to all employees, the mechanics and truck drivers are generally paid more than production and maintenance employees. Truck drivers often work outside of the Employer's regular hours, and mechanics at times are required to work after the other employees have gone home for the day. While the names of mechanics and truck drivers appear on the same seniority list as other employees, there are no examples of this fact having any impact on the terms or conditions of employment of the employees. Finally, although the mechanics and truck drivers are functionally integrated into the Employer's production process to some extent, this factor is outweighed by the other community-of interest factors.

Considering the relevant criteria, I find that based on differences in employee skills, job functions, wages and working conditions, non-extensive contact with production and maintenance employees, and the lack of temporary or permanent interchange, truck drivers do not have the requisite community of interest with the production and maintenance employees to compel their inclusion in the unit. *Publix Super Markets, Inc.*, above, slip op., p. 7 (2004); *Home Depot USA, Inc.*, above. For the same reasons, as well the existence of separate supervision, I also find that the mechanics are not required to be included in the unit. *Yuengling Brewing Company of Tampa, Inc.*, 333 NLRB 892 (2001); *Lawson Mardon, U.S.A., Inc.*, 332 NLRB 1282 (2000); *Ore-Ida Foods*, 313 NLRB 1016 (1994); enf'd. 66 F.3d 328 (7th Cir. 1995).

IV. CONCLUSIONS AND FINDINGS

Based upon the entire record in this matter and for the reasons set forth above, I conclude and find as follows:

1. The Hearing Officer's rulings made at the hearing are free from prejudicial error and are hereby affirmed.
2. The Employer is engaged in commerce within the meaning of the Act, and it will effectuate the purposes of the Act to assert jurisdiction in this case.
3. The Petitioner claims to represent certain employees of the Employer.
4. A question affecting commerce exists concerning the representation of certain employees of the Employer within the meaning of Section 9(c)(1) and Section 2(6) and (7) of the Act.
5. The following employees of the Employer constitute a unit appropriate for the purposes of collective bargaining within the meaning of Section 9(b) of the Act:

All full-time and regular part-time production and maintenance employees employed by the Employer at its Collingswood, Pennsauken, and Shrewsbury, New Jersey facilities, excluding truck drivers, mechanics, managers, office clerical employees, salespersons, guards, and supervisors as defined in the Act.

The Petitioner's showing of interest may now be inadequate due to the additional employees included in the unit as a result of this Decision. Accordingly, as the Petitioner has indicated that it would proceed to an election in any unit found appropriate, the Petitioner has 14 days from the issuance of this Decision to augment its showing of interest, if necessary. See NLRB Casehandling Manual (Part Two), Representation Proceedings, Sec. 11031.2. If the Petitioner fails to submit an adequate showing of interest within this period, or to withdraw the petition, the petition will be dismissed without further order. The Direction of Election set forth below is thus conditioned on the Petitioner having an adequate showing of interest. See *Alamo Rent-A-Car*, 330 NLRB 897 (2000). In the event that a request for review is filed with respect to this Decision, the foregoing requirement will be suspended until the Board rules on the request for review.

V. DIRECTION OF ELECTION

The National Labor Relations Board will conduct a secret ballot election among the employees in the unit found appropriate above. The employees will vote whether or not they wish to be represented for the purposes of collective bargaining by **United Food and Commercial Workers, Local 342**. The date, time, and place of the election will be specified in the Notice of Election that the Board's Regional Office will issue subsequent to this Decision.

A. Eligible Voters

The eligible voters shall be unit employees employed during the designated payroll period for eligibility, including employees who did not work during that period because they were ill, on vacation, or were temporarily laid off. Employees engaged in any economic strike, who have retained their status as strikers and who have not been permanently replaced are also eligible to vote. In addition, employees engaged in an economic strike, which commenced less than 12 months before the election date, who have retained their status as strikers but who have been permanently replaced, as well as their replacements are eligible to vote. Employees who are otherwise eligible but who are in the military services of the United States may vote if they appear in person at the polls. Ineligible to vote are: 1) employees who have quit or been discharged for cause after the designated payroll period for eligibility; 2) employees engaged in a strike who have been discharged for cause since the commencement thereof and who have not been rehired or reinstated before the election date; and 3) employees engaged in an economic strike which began more than 12 months before the election date who have been permanently replaced.

B. Employer to Submit List of Eligible Voters

To ensure that all eligible voters may have the opportunity to be informed of the issues in the exercise of their statutory right to vote, all parties to the election should have access to a list of voters and their addresses, which may be used to communicate with them. *Excelsior Underwear, Inc.*, 156 NLRB 1236 (1966); *NLRB v. Wyman-Gordon Company*, 394 U.S. 759 (1969).

Accordingly, it is hereby directed that within seven (7) days of the date of this Decision, the Employer must submit to the Regional Office an election eligibility list, containing the *full* names and addresses of all the eligible voters. *North Macon Health Care Facility*, 315 NLRB 359, 361 (1994). The list must be of sufficiently large type to be clearly legible. To speed both preliminary checking and the voting process, the names on the list should be alphabetized (overall or by department, etc.). This list may initially be used by me to assist in determining an adequate showing of interest. I shall, in turn, make the list available to all parties to the election, only after I shall have determined an adequate showing of interest among the employees in the units found appropriate has been established.

To be timely filed, the list must be received in the Regional Office, One Independence Mall, 615 Chestnut Street, Seventh Floor, Philadelphia, Pennsylvania 19106 on or before **July 26, 2006**. No extension of time to file this list shall be granted except in extraordinary circumstances, nor will the filing of a request for review affect the requirement to file this list. Failure to comply with this requirement will be grounds for setting aside the election whenever proper objections are filed. The list may be submitted by facsimile transmission at (215) 597-7658, or by e-mail to Region4@NLRB.gov.¹¹ Since the list will be made available to all parties to the election, please furnish a total of two (2) copies, unless the list is submitted by facsimile or e-mail, in which case no copies need be submitted. If you have any questions, please contact the Regional Office.

C. Notice of Posting Obligations

According to Section 103.20 of the Board's Rules and Regulations, the Employer must post the Notices to Election provided by the Board in areas conspicuous to potential voters for a minimum of three (3) working days prior to the date of the election. Failure to follow the posting requirement may result in additional litigation if proper objections to the election are filed. Section 103.20(c) requires an employer to notify the Board at least five (5) working days prior to 12:01 a.m. of the day of the election if it has not received copies of the election notice. *Club Demonstration Services*, 317 NLRB 349 (1995). Failure to do so estops employers from filing objections based on non-posting of the election notice.

¹¹ See OM 05-30, dated January 12, 2005, for a detailed explanation of requirements which must be met when electronically submitting representation case documents to the Board, or to a Region's electronic mailbox. OM 05-30 is available on the Agency's website at www.nlr.gov.

VI. RIGHT TO REQUEST REVIEW

Under the provisions of Section 102.67 of the Board's Rules and Regulations, a request for review of this Decision may be filed with the National Labor Relations Board, addressed to the Executive Secretary, 1099 14th Street, NW, Washington, D.C. 20570-0001. A request for review may also be submitted by e-mail. For details on how to file a request for review by e-mail, see <http://gpea.NLRB.gov/>. This request must be received by the Board in Washington by 5:00 p.m., EDT on **August 2, 2006**.

Signed: July 19, 2006

at Philadelphia, Pennsylvania

/s/ [Dorothy L. Moore-Duncan]
DOROTHY L. MOORE-DUNCAN
Regional Director, Region Four
National Labor Relations Board